


IN THE SUPREME COURT OF WESTERN AUSTRALIA

COR 160 of 2009

IN THE MATTER OF GBS GOLD AUSTRALIA PTY LTD (IN LIQUIDATION)
ACN 115 384 319 & OTHERS AS SET OUT IN THE SCHEDULE TO THE
ORIGINATING PROCESS

EX PARTE

The seal of the Supreme Court of Western Australia is circular, featuring a central shield with a crown above it, flanked by two kangaroos. The text "OF THE SUPREME COURT OF WESTERN AUSTRALIA" is written around the perimeter of the seal.
**ANDREW JOHN SAKER, MARTIN BRUCE JONES & DARREN GORDON
WEAVER IN THEIR CAPACITIES AS LIQUIDATORS OF GBS GOLD
AUSTRALIA PTY LTD (IN LIQUIDATION) ACN 115 384 319 & OTHER
COMPANIES AS SET OUT IN THE SCHEDULE TO THE ORIGINATING
PROCESS**

Plaintiffs

**ORDER
BEFORE MASTER SANDERSON IN CHAMBERS
20 AUGUST 2009**

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Filed on behalf of: Plaintiffs

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UPON the application of the Plaintiff by Amended Originating Process dated 11 August 2009 ("**Application**") and UPON HEARING Mr J Vaughan of Counsel for the Plaintiffs IT IS ORDERED THAT:

1. The time for hearing of the Application is abridged so that the Application may be heard at any time after the filing of the Application.
2. The obligation to comply with Rule 2.4 (2) of the *Supreme Court (Corporations) (WA) Rules 2004* is dispensed with.

3. Pursuant to s 447A(1) of the *Corporations Act* 2001 (**Act**), Part 5.3A of the Act is to operate in relation to GBS Gold Australia Pty Ltd (ACN 115 384 319) and its related entities as listed in the Schedule to this order (together **Companies**) as if the creditors of each Company had on 27 February 2009 separately resolved in accordance with s 439C(c) of the Act that:

"The Company be wound up."

4. Pursuant to s 447A(1) of the Act, Part 5.3A of the Act is to operate in relation to each of GBS Gold Australia Pty Ltd (ACN 115 384 319), Terra Gold Mining Pty (ACN 071 444 061), Northern Gold Pty Ltd (ACN 009 620 937), Territory Goldfields Pty Ltd (ACN 066 581 075), Buffalo Creek Mines Pty Ltd (ACN 097 907 625) & GBS Gold (Tom's Gully) Pty Ltd (ACN 124 851 862) (**DXG Companies**) as if:

- (a) for the purpose of the remuneration, right of indemnity and lien of the plaintiffs, in their capacities as administrators of the DXG Companies under administration, the administrations of the DXG Companies be conducted on the pooled basis that each DXG Company is jointly and severally liable for each such debt payable by, and each such claim against, itself and each other DXG Company. Without limiting the generality of the foregoing, pursuant to s 447A(1) of the Act, Part 5.3A of the Act is to operate in relation to each of the DXG Companies as if:

- (i) section 443D read that:

"The plaintiffs, as administrators of the DXG Companies, are entitled to be indemnified out of the property of each of the DXG Companies for:

- (a) any debts incurred for or in respect of any of the DXG Companies for which the plaintiffs are liable under Subdivision A or a remittance provision as defined in subsection 443BA(3);

- (aa) any other debts or liabilities incurred, or damages or losses sustained, in good faith and without negligence, by the plaintiffs in the performance or exercise, or purported performance or exercise, of any of their functions or powers as administrators of any of the DXG Companies;
 - (b) the plaintiffs' remuneration for or in respect of any of the DXG Companies as fixed under section 449E (as modified by the orders of the Court under paragraph 4(a)(iii) below).";
- (ii) section 443F read that:
 - "(1) To secure a right of indemnity under section 443D (as modified by the orders of the Court under paragraph 4(a)(i) above), the plaintiffs, as administrators of the DXG Companies, have a lien on the property of each of the DXG Companies.
 - (2) A lien under subsection (1) (as modified by the orders of the Court under this paragraph 4(a)(ii)) has priority over a charge only in so far as the right of indemnity under section 443D (as modified by the orders of the Court under paragraph 4(a)(i) above) has priority over debts secured by the charge.";
- (iii) section 449E(1) read that:

"The plaintiffs, in their capacities as administrators of the DXG Companies under administration, are entitled to receive remuneration determined on the pooled basis that each DXG Company is jointly and severally liable for remuneration payable in respect of the work done in relation to it and each other DXG Company. Such remuneration is to be as is determined:

- (a) by agreement between the plaintiffs and the DXG Committee (as provided for by the orders of the Court under paragraph 4(b)(i) below);
 - (b) by a joint resolution of the creditors of the DXG Companies; or
 - (c) if there is no such agreement or resolution – by the Court.";
- (b) section 446A of the Act provided that:
- (i) a committee of inspection must be appointed for the purpose of the windings up of each of the DXG Companies (and for that purpose Part 5.3A of the Act is to operate in relation to the DXG Companies as if: (A) the creditors of each DXG Company had on 27 February 2009 separately resolved that the committee of inspection (**DXG Committee**) comprise Dillon Cameron, Ray Wooldridge and Geoff Akers (with Jackson Annear as Mr Akers' alternate); and (B) all purported resolutions of the DXG Committee pursuant to s 477(2B) of the Act passed between 27 February 2009 and 20 August 2009 were effective);
 - (ii) for the purpose of the remuneration, right of indemnity and lien of the plaintiffs, in their capacities as liquidators of the DXG Companies, the windings up of the DXG Companies be conducted on the pooled basis that each DXG Company is jointly and severally liable for each such debt payable by, and each such claim against, itself and each other DXG Company;
 - (iii) without limiting the generality of paragraph 4(b)(ii) above, for the purpose of the windings up of the DXG Companies s 499(3) read:

"The plaintiffs' remuneration in their capacities as liquidators

of the DXG Companies is to be determined on the pooled basis that each DXG Company is jointly and severally liable for remuneration payable in respect of the work done in relation to it and each other DXG Company. Such remuneration is to be as is determined:

- (a) by the DXG Committee; or
 - (b) by a joint resolution of the creditors of the DXG Companies."
5. Liberty to apply, on 3 days written notice to the plaintiffs, is granted to any person who can demonstrate sufficient interest to modify or discharge these orders.
 6. Liberty is granted to the plaintiffs to apply for any further orders and directions in relation to the implementation of these orders.
 7. The costs of the application are costs to be paid jointly and severally from the assets of the Companies.
 8. It is directed that the plaintiffs give notice of these orders by publishing a copy of these orders on the website "www.ferrierhodgson.com" within 5 business days after the making of these orders.

BY THE COURT



REGISTRAR

SCHEDULE

The companies the subject of this order comprise GBS Gold Australia Pty Ltd (in liquidation) (ACN 115 384 319) and each of:

1. GBS Gold (Tom's Gully) Pty Ltd (ACN 124 851 862) (in liquidation);
2. Northern Gold Pty Ltd (in liquidation) (ACN 009 620 937);
3. Territory Goldfields Pty Ltd (in liquidation) (ACN 066 581 075);
4. Buffalo Creek Mines Pty Ltd (in liquidation) (ACN 097 907 625);
5. Terra Gold Mining Pty Ltd (in liquidation) (ACN 071 444 061);
6. Burnside Operations Pty Ltd (in liquidation) (ACN 097 922 444);
7. GBS Gold Holdings Pty Ltd (in liquidation) (ACN 126 471 136);
8. Terra Metals Pty Ltd (in liquidation) (ACN 092 922 097); and
9. GBS Gold Australia (Land Holdings) Pty Ltd (in liquidation) (ACN 119 998 793).